

### REMARKS

Claims 1-14 and 42-44 remain pending in this application. Claims 1-9 and 43 are allowed. Claims 15-40 are cancelled as directed to a non-elected invention. In the Final Office Action dated June 17, 2005, Claims 11-12 and 44 were rejected for indefiniteness under 35 U.S.C. § 112, ¶ 2, Claims 10 and 13-14 were rejected under 35 U.S.C. § 102 as being anticipated by U.S. 5,253,300 to Knapp ("Knapp"), and Claim 42 was rejected under 35 U.S.C. § 103 as being obvious over Knapp. In addition, Claims 1-14 and 42-43 were rejected for obviousness-type double patenting over the claims of U.S. 5,881,159 to Aceti *et al.* ("Aceti '159") and U.S. 6,473,511 to Aceti *et al.* ("Aceti '511"). For the following reasons, it is believed that all the rejections are overcome, and that the present claims are in condition for allowance.

#### Indefiniteness Objections/Rejections

In the Final Rejection, Claims 11-12 and 44 were objected to on the grounds that the claimed limitation of "tinted" failed to further limit the claims, and were also rejected as being indefinite since, according to the Examiner, "it is not clear how a substantially translucent or transparent shell can be further tinted."

Claim 11 has been amended to specify that the "substantially translucent or transparent shell is tinted the same color as the at least one hearing aid component." Applicants submit that Claims 11-12 and 44 are not indefinite, and do properly further limit their base claims, since it would be readily apparent to one of ordinary skill in the art that a substantially translucent or transparent shell can be further tinted. The shell being "substantially translucent or transparent" refers to the amount of light that is transmitted through the shell. The shell being "tinted" refers to the shell having the appearance of a particular shade of a color. There is no inconsistency between a shell being "substantially translucent or transparent" and further having a "tinted" appearance (e.g., a tinted window). Thus, it is submitted that the claim objections and indefiniteness rejections are overcome.

§§ 102/103 Rejections

In the Final Office Action, Claims 1-9 and 43 were allowed, Claims 10 and 13-14 were rejected as being anticipated by Knapp, and Claim 42 was rejected as being obvious over Knapp.

Independent Claim 10 (from which Claims 11-14, 42 and 44 depend) has been amended to recite a hearing aid having a shell enclosing one or more hearing aid components, the shell being substantially translucent or transparent *over substantially the entire surface of the shell*. Support for this amendment can be found in the Specification at, for example, page 6, lines 21-28, and page 23, lines 10-20. It is respectfully submitted that the cited Knapp reference does not teach or suggest a hearing aid wherein the shell is *substantially translucent or transparent over substantially the entire surface of the shell*. In fact, Knapp appears to teach away from such a design, by suggesting that the “casing 18” of the hearing aid, which substantially corresponds to the “shell” of the present claims, “does not suffer from unsightliness due to visible exposure of solar cells, doors and the like.” Thus, the implication is that the “casing 18” of the Knapp device, though it may be flesh colored, is opaque, and not translucent or transparent, to minimize the unsightliness of internal components like a solar cell. By contrast, the present invention specifies that the shell itself is made from a substantially transparent or translucent material over substantially the entire surface of the shell. This material can also be tinted, i.e., colored, as recited in dependent Claim 44, to render it even less conspicuous. This design is particularly advantageous in the case of more visible hearing aids, such as a behind-the-ear (BTE) type hearing aid.

In the Office Action, the Examiner cites the portion of Knapp which describes that the “face plate 17 [can] be translucent but not transparent or opaque.” (Col. 4, lines 29-30). However, this does not disclose or suggest the present claims, in which the hearing aid shell is transparent or translucent “substantially over the entire surface of the shell,” particularly since, as described above, Knapp teaches that the “casing 18” portion of the shell, comprising the major portion of the hearing aid shell (see Figs. 1 & 2), is neither translucent nor transparent.

Since the cited Knapp patent fails to teach or suggest the limitation of amended Claim 10, it is respectfully submitted that Claim 10 and its dependents, Claims 11-14, 42 and 44, are all allowable.

Double Patenting Rejections

Claims 1-14 and 42-43 were rejected for obviousness-type double patenting over Claims 1-10 of Aceti '159, and Claims 1-14 of Aceti '511. Applicants respectfully submit that these rejections are improper, since the subject matter of the present claims and the claims of the Aceti patents are not mere obvious variations of one another. The Aceti '159 patent claims hearing aid devices, but these claims do not recite or suggest numerous limitations of the present claims, such as a "shell including at least a substantially translucent or transparent faceplate, at least a portion of at least one hearing aid component located interior of the faceplate being tinted," as is recited in independent Claim 1 of the present application, or a "shell being substantially translucent or transparent over substantially the entire surface of the shell," as is recited in independent Claim 10 of the present application.

Similarly, the Aceti '511 patent includes claims to a disposable hearing aid, but these claims do not include or suggest numerous features now recited in the present claims, including the limitations described above.

In making the double patenting rejection, the Examiner did not make clear what the differences were between the inventions defined in the conflicting claims, and did not provide any reasons why one skilled in the art would conclude that these differences would have been mere obvious variations. See M.P.E.P. § 804(II)(B)(1). The applicants submit that the differences between the claims of the Aceti patents and the claims of the present application are numerous and substantial, and that the respective claims do not constitute mere obvious variations of one another. Accordingly, Applicants submit that the double patenting rejections should be withdrawn, and that all claims should be allowed.

Supplemental Information Disclosure Statement

A Supplemental Information Disclosure Statement (IDS) is being filed concurrently herewith. Entry of the Supplemental IDS is respectfully requested.

**CONCLUSION**

In view of the above amendments and remarks, it is believed that all claims are in condition for allowance, and it is respectfully requested that the application be passed to issue. If the Examiner feels that a telephone conference would expedite prosecution of this case, the Examiner is invited to call the undersigned.

Respectfully submitted,

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